FISHERIES

Convention Between the
UNITED STATES OF AMERICA
and OTHER GOVERNMENTS

Signed at Honolulu September 5, 2000

with

Annexes

NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966 (80 Stat. 271; 1 U.S.C. 113)—

". . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof."

MULTILATERAL

Fisheries

Convention signed at Honolulu September 5, 2000;
Transmitted by the President of the United States of America to the Senate May 16, 2005 (Treaty Doc. 109-1, 109th Congress, 1st Session);
Reported favorably by the Senate Committee on Foreign Relations October 25, 2005 (Senate Executive Report No. 109-8, 109th Congress, 1st Session);
Advice and consent to ratification by the Senate November 18, 2005;
Ratified by the President May 15, 2007;
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Entered into force July 27, 2007.
With annexes.

CONVENTION ON THE CONSERVATION AND MANAGEMENT OF HIGHLY MIGRATORY FISH STOCKS IN THE WESTERN AND CENTRAL PACIFIC OCEAN

The Contracting Parties to this Convention,

Determined to ensure the long-term conservation and sustainable use, in particular for human food consumption, of highly migratory fish stocks in the western and central Pacific Ocean for present and future generations,

Recalling the relevant provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 and the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks,

Recognizing that, under the 1982 Convention and the Agreement, coastal States and States fishing in the region shall cooperate with a view to ensuring conservation and promoting the objective of optimum utilization of highly migratory fish stocks throughout their range,

Mindful that effective conservation and management measures require the application of the precautionary approach and the best scientific information available,

Conscious of the need to avoid adverse impacts on the marine environment, preserve biodiversity, maintain the integrity of marine ecosystems and minimize the risk of long-term or irreversible effects of fishing operations,

Recognizing the ecological and geographical vulnerability of the small island developing States, territories and possessions in the region, their economic and social dependence on highly migratory fish stocks, and their need for specific assistance, including financial, scientific and technological assistance, to allow them to participate effectively in the conservation, management and sustainable use of the highly migratory fish stocks,

Further recognizing that smaller island developing States have unique needs which require special attention and consideration in the provision of financial, scientific and technological assistance,

Acknowledging that compatible, effective and binding conservation and management measures can be achieved only through cooperation between coastal States and States fishing in the region,

Convinced that effective conservation and management of the highly migratory fish stocks of the western and central Pacific Ocean in their entirety may best be achieved through the establishment of a regional Commission,

Have agreed as follows:

PART I

GENERAL PROVISIONS

Article 1

Use of terms

For the purposes of this Convention:

(a) "1982 Convention" means the United Nations Convention on the Law of the Sea of 10 December 1982;

(b) "Agreement" means the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks;

(c) "Commission" means the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean established in accordance with this Convention;

(d) "fishing" means:

(i) searching for, catching, taking or harvesting fish;

(ii) attempting to search for, catch, take or harvest fish;

(iii) engaging in any other activity which can reasonably be expected to result in the locating, catching, taking or harvesting of fish for any purpose;

(iv) placing, searching for or recovering fish aggregating devices or associated electronic equipment such as radio beacons;

(v) any operations at sea directly in support of, or in preparation for, any activity described in subparagraphs (i) to (iv), including transhipment;

(vi) use of any other vessel, vehicle, aircraft or hovercraft, for any activity described in subparagraphs (i) to (v) except for emergencies involving the health and safety of the crew or the safety of a vessel;

(e) "fishing vessel" means any vessel used or intended for use for the purpose of fishing, including support ships, carrier vessels and any other vessel directly involved in such fishing operations;

(f) "highly migratory fish stocks" means all fish stocks of the species listed in Annex 1 of the 1982 Convention occurring in the Convention Area, and such other species of fish as the Commission may determine;

(g) "regional economic integration organization" means a regional economic integration organization to which its member States have transferred competence over

matters covered by this Convention, including the authority to make decisions binding on its member States in respect of those matters;

(h) "transhipment" means the unloading of all or any of the fish on board a fishing vessel to another fishing vessel either at sea or in port.

Article 2

Objective

The objective of this Convention is to ensure, through effective management, the long-term conservation and sustainable use of highly migratory fish stocks in the western and central Pacific Ocean in accordance with the 1982 Convention and the Agreement.

Article 3

Area of application

1. Subject to article 4, the area of competence of the Commission (hereinafter referred to as "the Convention Area") comprises all waters of the Pacific Ocean bounded to the south and to the east by the following line:

> From the south coast of Australia due south along the 141° meridian of east longitude to its intersection with the 55° parallel of south latitude; thence due east along the 55° parallel of south latitude to its intersection with the 150° meridian of east longitude; thence due south along the 150° meridian of east longitude to its intersection with the 60° parallel of south latitude; thence due east along the 60° parallel of south latitude to its intersection with the 130° meridian of west longitude; thence due north along the 130° meridian of west longitude to its intersection with the 4° parallel of south latitude; thence due west along the 4° parallel of south latitude to its intersection with the 150° meridian of west longitude; thence due north along the 150° meridian of west longitude.

2. Nothing in this Convention shall constitute recognition of the claims or positions of any of the members of the Commission concerning the legal status and extent of waters and zones claimed by any such members.

3. This Convention applies to all stocks of highly migratory fish within the Convention Area except sauries. Conservation and management measures under this Convention shall be applied throughout the range of the stocks, or to specific areas within the Convention Area, as determined by the Commission.

Article 4

Relationship between this Convention and the 1982 Convention

Nothing in this Convention shall prejudice the rights, jurisdiction and duties of States under the 1982 Convention and the Agreement. This Convention shall be interpreted and applied in the context of and in a manner consistent with the 1982 Convention and the Agreement.

PART II

CONSERVATION AND MANAGEMENT OF HIGHLY MIGRATORY FISH STOCKS

Article 5

Principles and measures for conservation and management

In order to conserve and manage highly migratory fish stocks in the Convention Area in their entirety, the members of the Commission shall, in giving effect to their duty to cooperate in accordance with the 1982 Convention, the Agreement and this Convention:

(a) adopt measures to ensure long-term sustainability of highly migratory fish stocks in the Convention Area and promote the objective of their optimum utilization;

(b) ensure that such measures are based on the best scientific evidence available and are designed to maintain or restore stocks at levels capable of producing maximum sustainable yield, as qualified by relevant environmental and economic factors, including the special requirements of developing States in the Convention Area, particularly small island developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global;

(c) apply the precautionary approach in accordance with this Convention and all relevant internationally agreed standards and recommended practices and procedures;

(d) assess the impacts of fishing, other human activities and environmental factors on target stocks, non-target species, and species belonging to the same ecosystem or dependent upon or associated with the target stocks;

(e) adopt measures to minimize waste, discards, catch by lost or abandoned gear, pollution originating from fishing vessels, catch of non-target species, both fish and non-fish species, (hereinafter referred to as non-target species) and impacts on associated or dependent species, in particular endangered species and promote the development and use of selective, environmentally safe and cost-effective fishing gear and techniques;

(f) protect biodiversity in the marine environment;

(g) take measures to prevent or eliminate over-fishing and excess fishing capacity and to ensure that levels of fishing effort do not exceed those commensurate with the sustainable use of fishery resources;

(h) take into account the interests of artisanal and subsistence fishers;

(i) collect and share, in a timely manner, complete and accurate data concerning fishing activities on, inter alia, vessel position, catch of target and non-target species and fishing effort, as well as information from national and international research programmes; and

(j) implement and enforce conservation and management measures through effective monitoring, control and surveillance.

Article 6

Application of the precautionary approach

1. In applying the precautionary approach, the members of the Commission shall:

(a) apply the guidelines set out in Annex II of the Agreement, which shall form an integral part of this Convention, and determine, on the basis of the best scientific information available, stock-specific reference points and the action to be taken if they are exceeded;

(b) take into account, inter alia, uncertainties relating to the size and productivity of the stocks, reference points, stock condition in relation to such reference points, levels and distributions of fishing mortality and the impact of fishing activities on non-target and associated or dependent species, as well as existing and predicted oceanic, environmental and socio-economic conditions; and

(c) develop data collection and research programmes to assess the impact of fishing on non-target and associated or dependent species and their environment, and adopt plans where necessary to ensure the conservation of such species and to protect habitats of special concern.

2. Members of the Commission shall be more cautious when information is uncertain, unreliable or inadequate. The absence of adequate scientific information shall not be used as a reason for postponing or failing to take conservation and management measures.

3. Members of the Commission shall take measures to ensure that, when reference points are approached, they will not be exceeded. In the event they are exceeded, members of the Commission shall, without delay, take the action determined under paragraph 1(a) to restore the stocks.

4. Where the status of target stocks or non-target or associated or dependent species is of concern, members of the Commission shall subject such stocks and species to enhanced monitoring in order to review their status and the efficacy of conservation and management measures. They shall revise those measures regularly in the light of new information.

5. For new or exploratory fisheries, members of the Commission shall adopt as soon as possible cautious conservation and management measures, including, inter alia, catch limits and effort limits. Such measures shall remain in force until there are sufficient data to allow assessment of the impact of the fisheries on the long-term sustainability of the stocks, whereupon conservation and management measures based on that assessment shall be implemented. The latter measures shall, if appropriate, allow for the gradual development of the fisheries.

6. If a natural phenomenon has a significant adverse impact on the status of highly migratory fish stocks, members of the Commission shall adopt conservation and

management measures on an emergency basis to ensure that fishing activity does not exacerbate such adverse impacts. Members of the Commission shall also adopt such measures on an emergency basis where fishing activity presents a serious threat to the sustainability of such stocks. Measures taken on an emergency basis shall be temporary and shall be based on the best scientific information available.

Article 7

Implementation of principles in areas under national jurisdiction

1. The principles and measures for conservation and management enumerated in article 5 shall be applied by coastal States within areas under national jurisdiction in the Convention Area in the exercise of their sovereign rights for the purpose of exploring and exploiting, conserving and managing highly migratory fish stocks.

2. The members of the Commission shall give due consideration to the respective capacities of developing coastal States, in particular small island developing States, in the Convention Area to apply the provisions of articles 5 and 6 within areas under national jurisdiction and their need for assistance as provided for in this Convention.

Article 8

Compatibility of conservation and management measures

1. Conservation and management measures established for the high seas and those adopted for areas under national jurisdiction shall be compatible in order to ensure conservation and management of highly migratory fish stocks in their entirety. To this end, the members of the Commission have a duty to cooperate for the purpose of achieving compatible measures in respect of such stocks.

2. In establishing compatible conservation and management measures for highly migratory fish stocks in the Convention Area, the Commission shall:

(a) take into account the biological unity and other biological characteristics of the stocks and the relationships between the distribution of the stocks, the fisheries and the geographical particularities of the region concerned, including the extent to which the stocks occur and are fished in areas under national jurisdiction;

(b) take into account:

(i) the conservation and management measures adopted and applied in accordance with article 61 of the 1982 Convention in respect of the same stocks by coastal States within areas under national jurisdiction and ensure that measures established in respect of such stocks for the Convention Area as a whole do not undermine the effectiveness of such measures;

(ii) previously agreed measures established and applied in respect of the same stocks for the high seas which form part of the Convention Area

by relevant coastal States and States fishing on the high seas in accordance with the 1982 Convention and the Agreement;

(c) take into account previously agreed measures established and applied in accordance with the 1982 Convention and the Agreement in respect of the same stocks by a subregional or regional fisheries management organization or arrangement;

(d) take into account the respective dependence of the coastal States and the States fishing on the high seas on the stocks concerned; and

(e) ensure that such measures do not result in harmful impact on the living marine resources as a whole.

3. The coastal State shall ensure that the measures adopted and applied by it to highly migratory fish stocks within areas under its national jurisdiction do not undermine the effectiveness of measures adopted by the Commission under this Convention in respect of the same stocks.

4. Where there are areas of high seas in the Convention Area entirely surrounded by the exclusive economic zones of members of the Commission, the Commission shall, in giving effect to this article, pay special attention to ensuring compatibility between conservation and management measures established for such high seas areas and those established in respect of the same stocks in accordance with article 61 of the 1982 Convention by the surrounding coastal States in areas under national jurisdiction.

PART III
COMMISSION FOR THE CONSERVATION AND MANAGEMENT OF HIGHLY MIGRATORY FISH STOCKS IN THE WESTERN AND CENTRAL PACIFIC OCEAN

SECTION 1. GENERAL PROVISIONS

Article 9

Establishment of the Commission

1. There is hereby established the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, which shall function in accordance with the provisions of this Convention.

2. A fishing entity referred to in the Agreement, which has agreed to be bound by the regime established by this Convention in accordance with the provisions of Annex I, may participate in the work, including decision-making, of the Commission in accordance with the provisions of this article and Annex I.

3. The Commission shall hold an annual meeting. The Commission shall hold such other meetings as may be necessary to carry out its functions under this Convention.

4. The Commission shall elect a chairman and a vice-chairman from among the Contracting Parties, who shall be of different nationalities. They shall be elected for a period of two years and shall be eligible for re-election. The chairman and vice-chairman shall remain in office until the election of their successors.

5. The principle of cost-effectiveness shall apply to the frequency, duration and scheduling of meetings of the Commission and its subsidiary bodies. The Commission may, where appropriate, enter into contractual arrangements with relevant institutions to provide expert services necessary for the efficient functioning of the Commission and to enable it to carry out effectively its responsibilities under this Convention.

6. The Commission shall have international legal personality and such legal capacity as may be necessary to perform its functions and achieve its objectives. The privileges and immunities which the Commission and its officers shall enjoy in the territory of a Contracting Party shall be determined by agreement between the Commission and the member concerned.

7. The Contracting Parties shall determine the location of the headquarters of the Commission and shall appoint its Executive Director.

8. The Commission shall adopt, and amend as required, by consensus, rules of procedure for the conduct of its meetings, including meetings of its subsidiary bodies, and for the efficient exercise of its functions.

Article 10

Functions of the Commission

1. Without prejudice to the sovereign rights of coastal States for the purpose of exploring and exploiting, conserving and managing highly migratory fish stocks within areas under national jurisdiction, the functions of the Commission shall be to:

(a) determine the total allowable catch or total level of fishing effort within the Convention Area for such highly migratory fish stocks as the Commission may decide and adopt such other conservation and management measures and recommendations as may be necessary to ensure the long-term sustainability of such stocks;

(b) promote cooperation and coordination between members of the Commission to ensure that conservation and management measures for highly migratory fish stocks in areas under national jurisdiction and measures for the same stocks on the high seas are compatible;

(c) adopt, where necessary, conservation and management measures and recommendations for non-target species and species dependent on or associated with the target stocks, with a view to maintaining or restoring populations of such species above levels at which their reproduction may become seriously threatened;

(d) adopt standards for collection, verification and for the timely exchange and reporting of data on fisheries for highly migratory fish stocks in the Convention Area in accordance with Annex I of the Agreement, which shall form an integral part of this Convention;

(e) compile and disseminate accurate and complete statistical data to ensure that the best scientific information is available, while maintaining confidentiality, where appropriate;

(f) obtain and evaluate scientific advice, review the status of stocks, promote the conduct of relevant scientific research and disseminate the results thereof;

(g) develop, where necessary, criteria for the allocation of the total allowable catch or the total level of fishing effort for highly migratory fish stocks in the Convention Area;

(h) adopt generally recommended international minimum standards for the responsible conduct of fishing operations;

(i) establish appropriate cooperative mechanisms for effective monitoring, control, surveillance and enforcement, including a vessel monitoring system;

(j) obtain and evaluate economic and other fisheries-related data and information relevant to the work of the Commission;

(k) agree on means by which the fishing interests of any new member of the Commission may be accommodated;

(l) adopt its rules of procedure and financial regulations and such other internal administrative regulations as may be necessary to carry out its functions;

(m) consider and approve the proposed budget of the Commission;

(n) promote the peaceful settlement of disputes; and

(o) discuss any question or matter within the competence of the Commission and adopt any measures or recommendations necessary for achieving the objective of this Convention.

2. In giving effect to paragraph 1, the Commission may adopt measures relating to, inter alia:

(a) the quantity of any species or stocks which may be caught;

(b) the level of fishing effort;

(c) limitations of fishing capacity, including measures relating to fishing vessel numbers, types and sizes;

(d) the areas and periods in which fishing may occur;

(e) the size of fish of any species which may be taken;

(f) the fishing gear and technology which may be used; and

(g) particular subregions or regions.

3. In developing criteria for allocation of the total allowable catch or the total level of fishing effort the Commission shall take into account, inter alia:

(a) the status of the stocks and the existing level of fishing effort in the fishery;

(b) the respective interests, past and present fishing patterns and fishing practices of participants in the fishery and the extent of the catch being utilized for domestic consumption;

(c) the historic catch in an area;

(d) the needs of small island developing States, and territories and possessions, in the Convention Area whose economies, food supplies and livelihoods are overwhelmingly dependent on the exploitation of marine living resources;

(e) the respective contributions of participants to conservation and management of the stocks, including the provision by them of accurate data and their contribution to the conduct of scientific research in the Convention Area;

(f) the record of compliance by the participants with conservation and management measures;

(g) the needs of coastal communities which are dependent mainly on fishing for the stocks;

(h) the special circumstances of a State which is surrounded by the exclusive economic zones of other States and has a limited exclusive economic zone of its own;

(i) the geographical situation of a small island developing State which is made up of non-contiguous groups of islands having a distinct economic and cultural identity of their own but which are separated by areas of high seas;

(j) the fishing interests and aspirations of coastal States, particularly small island developing States, and territories and possessions, in whose areas of national jurisdiction the stocks also occur.

4. The Commission may adopt decisions relating to the allocation of the total allowable catch or the total level of fishing effort. Such decisions, including decisions relating to the exclusion of vessel types, shall be taken by consensus.

5. The Commission shall take into account the reports and any recommendations of the Scientific Committee and the Technical and Compliance Committee on matters within their respective areas of competence.

6. The Commission shall promptly notify all members of the measures and recommendations decided upon by the Commission and shall give due publicity to the conservation and management measures adopted by it.

Article 11

Subsidiary bodies of the Commission

1. There are hereby established as subsidiary bodies to the Commission a Scientific Committee and a Technical and Compliance Committee to provide advice and recommendations to the Commission on matters within their respective areas of competence.

2. Each member of the Commission shall be entitled to appoint one representative to each Committee who may be accompanied by other experts and advisers. Such representatives shall have appropriate qualifications or relevant experience in the area of competence of the Committee.

3. Each Committee shall meet as often as is required for the efficient exercise of its functions, provided that each Committee shall, in any event, meet prior to the annual meeting of the Commission and shall report to the annual meeting the results of its deliberations.

4. Each Committee shall make every effort to adopt its reports by consensus. If every effort to achieve consensus has failed, the report shall indicate the majority and minority views and may include the differing views of the representatives of the members on all or any part of the report.

5. In the exercise of their functions, each Committee may, where appropriate, consult any other fisheries management, technical or scientific organization with competence in the subject matter of such consultation and may seek expert advice as required on an ad hoc basis.

6. The Commission may establish such other subsidiary bodies as it deems necessary for the exercise of its functions, including working groups for the purpose of examining technical issues relating to particular species or stocks and reporting thereon to the Commission.

7. The Commission shall establish a committee to make recommendations on the implementation of such conservation and management measures as may be adopted by the Commission for the area north of the 20° parallel of north latitude and on the formulation of such measures in respect of stocks which occur mostly in this area. The committee shall include the members situated in such area and those fishing in the area. Any member of the Commission not represented on the committee may send a representative to participate in the deliberations of the committee as an observer. Any extraordinary cost incurred for the work of the committee shall be borne by the members of the committee. The committee shall adopt recommendations to the Commission by consensus. In adopting measures in relation to particular stocks and species in such area, the decision of the Commission shall be based on any recommendations of the committee. Such recommendations shall be consistent with the general policies and measures adopted by the Commission in respect of the stocks or species in question and with the principles and measures for conservation and management set out in this

Convention. If the Commission, in accordance with the rules of procedure for decision-making on matters of substance, does not accept the recommendation of the committee on any matter, it shall return the matter to the committee for further consideration. The committee shall reconsider the matter in the light of the views expressed by the Commission.

SECTION 2. SCIENTIFIC INFORMATION AND ADVICE

Article 12

Functions of the Scientific Committee

1. The Scientific Committee is established to ensure that the Commission obtains for its consideration the best scientific information available.

2. The functions of the Committee shall be to:

(a) recommend to the Commission a research plan, including specific issues and items to be addressed by the scientific experts or by other organizations or individuals, as appropriate, and identify data needs and coordinate activities that meet those needs;

(b) review the assessments, analyses, other work and recommendations prepared for the Commission by the scientific experts prior to consideration of such recommendations by the Commission and provide information, advice and comments thereon, as necessary;

(c) encourage and promote cooperation in scientific research, taking into account the provisions of article 246 of the 1982 Convention, in order to improve information on highly migratory fish stocks, non-target species, and species belonging to the same ecosystem or associated with or dependent upon such stocks in the Convention Area;

(d) review the results of research and analyses of target stocks or non-target or associated or dependent species in the Convention Area;

(e) report to the Commission its findings or conclusions on the status of target stocks or non-target or associated or dependent species in the Convention Area;

(f) in consultation with the Technical and Compliance Committee, recommend to the Commission the priorities and objectives of the regional observer programme and assess the results of that programme;

(g) make reports and recommendations to the Commission as directed, or on its own initiative, on matters concerning the conservation and management of and research on target stocks or non-target or associated or dependent species in the Convention Area; and

(h) perform such other functions and tasks as may be requested by or assigned to it by the Commission.

3. The Committee shall exercise its functions in accordance with such guidelines and directives as the Commission may adopt.

4. The representatives of the Oceanic Fisheries Programme of the Pacific Community and the Inter-American Tropical Tuna Commission, or their successor organizations, shall be invited to participate in the work of the Committee. The Committee may also invite other organizations or individuals with scientific expertise in matters related to the work of the Commission to participate in its meetings.

Article 13

Scientific services

1. The Commission, taking into account any recommendation of the Scientific Committee, may engage the services of scientific experts to provide information and advice on the fishery resources covered by this Convention and related matters that may be relevant to the conservation and management of those resources. The Commission may enter into administrative and financial arrangements to utilize scientific services for this purpose. In this regard, and in order to carry out its functions in a cost-effective manner, the Commission shall, to the greatest extent possible, utilize the services of existing regional organizations and shall consult, as appropriate, with any other fisheries management, technical or scientific organization with expertise in matters related to the work of the Commission.

2. The scientific experts may, as directed by the Commission:

(a) conduct scientific research and analyses in support of the work of the Commission;

(b) develop and recommend to the Commission and the Scientific Committee stock-specific reference points for the species of principal interest to the Commission;

(c) assess the status of stocks against the reference points established by the Commission;

(d) provide the Commission and the Scientific Committee with reports on the results of their scientific work, advice and recommendations in support of the formulation of conservation and management measures and other relevant matters; and

(e) perform such other functions and tasks as may be required.

3. In carrying out their work, the scientific experts may:

(a) undertake the collection, compilation and dissemination of fisheries data according to agreed principles and procedures established by the Commission, including procedures and policies relating to the confidentiality, disclosure and publication of data;

(b) conduct assessments of highly migratory fish stocks, non-target species, and species belonging to the same ecosystem or associated with or dependent upon such stocks, within the Convention Area;

(c) assess the impacts of fishing, other human activities and environmental factors on target stocks and species belonging to the same ecosystem or dependent upon or associated with the target stocks;

(d) assess the potential effects of proposed changes in the methods or levels of fishing and of proposed conservation and management measures; and

(e) investigate such other scientific matters as may be referred to them by the Commission.

4. The Commission may make appropriate arrangements for periodic peer review of scientific information and advice provided to the Commission by the scientific experts.

5. The reports and recommendations of the scientific experts shall be provided to the Scientific Committee and to the Commission.

SECTION 3. THE TECHNICAL AND COMPLIANCE COMMITTEE

Article 14

Functions of the Technical and Compliance Committee

1. The functions of the Technical and Compliance Committee shall be to:

(a) provide the Commission with information, technical advice and recommendations relating to the implementation of, and compliance with, conservation and management measures;

(b) monitor and review compliance with conservation and management measures adopted by the Commission and make such recommendations to the Commission as may be necessary; and

(c) review the implementation of cooperative measures for monitoring, control, surveillance and enforcement adopted by the Commission and make such recommendations to the Commission as may be necessary.

2. In carrying out its functions, the Committee shall:

(a) provide a forum for exchange of information concerning the means by which they are applying the conservation and management measures adopted by the Commission on the high seas and complementary measures in waters under national jurisdiction;

(b) receive reports from each member of the Commission relating to measures taken to monitor, investigate and penalize violations of provisions of this Convention and measures adopted pursuant thereto;

(c) in consultation with the Scientific Committee, recommend to the Commission the priorities and objectives of the regional observer programme, when established, and assess the results of that programme;

(d) consider and investigate such other matters as may be referred to it by the Commission, including developing and reviewing measures to provide for the verification and validation of fisheries data;

(e) make recommendations to the Commission on technical matters such as fishing vessel and gear markings;

(f) in consultation with the Scientific Committee, make recommendations to the Commission on the fishing gear and technology which may be used;

(g) report to the Commission its findings or conclusions on the extent of compliance with conservation and management measures; and

(h) make recommendations to the Commission on matters relating to monitoring, control, surveillance and enforcement.

3. The Committee may establish, with the approval of the Commission, such subsidiary bodies as may be necessary for the performance of its functions.

4. The Committee shall exercise its functions in accordance with such guidelines and directives as the Commission may adopt.

SECTION 4. THE SECRETARIAT

Article 15

The Secretariat

1. The Commission may establish a permanent Secretariat consisting of an Executive Director and such other staff as the Commission may require.

2. The Executive Director shall be appointed for a term of four years and may be re-appointed for a further term of four years.

3. The Executive Director shall be the chief administrative officer of the Commission, and shall act in that capacity in all the meetings of the Commission and of any subsidiary body, and shall perform such other administrative functions as are entrusted to the Executive Director by the Commission.

4. The Secretariat functions shall include the following:

(a) receiving and transmitting the Commission's official communications;

(b) facilitating the compilation and dissemination of data necessary to accomplish the objective of this Convention;

(c) preparing administrative and other reports for the Commission and the Scientific and Technical and Compliance Committees;

(d) administering agreed arrangements for monitoring, control and surveillance and the provision of scientific advice;

(e) publishing the decisions of and promoting the activities of the Commission and its subsidiary bodies; and

(f) treasury, personnel and other administrative functions.

5. In order to minimize costs to the members of the Commission, the Secretariat to be established under this Convention shall be cost effective. The setting up and the functioning of the Secretariat shall, where appropriate, take into account the capacity of existing regional institutions to perform certain technical secretariat functions.

Article 16

The staff of the Commission

1. The staff of the Commission shall consist of such qualified scientific and technical and other personnel as may be required to fulfil the functions of the Commission. The staff shall be appointed by the Executive Director.

2. The paramount consideration in the recruitment and employment of the staff shall be the necessity of securing the highest standards of efficiency, competence and integrity. Subject to this consideration, due regard shall be paid to the importance of recruiting the staff on an equitable basis between the members of the Commission with a view to ensuring a broad-based Secretariat.

SECTION 5. FINANCIAL ARRANGEMENTS OF THE COMMISSION

Article 17

Funds of the Commission

1. The funds of the Commission shall include:

(a) assessed contributions in accordance with article 18, paragraph 2;

(b) voluntary contributions;

(c) the fund referred to in article 30, paragraph 3; and

(d) any other funds which the Commission may receive.

2. The Commission shall adopt, and amend as required, by consensus, financial regulations for the administration of the Commission and for the exercise of its functions.

Article 18

Budget of the Commission

1. The Executive Director shall draft the proposed budget of the Commission and submit it to the Commission. The proposed budget shall indicate which of the administrative expenses of the Commission are to be financed from the assessed contributions referred to in article 17, paragraph 1 (a), and which such expenses are to be financed from funds received pursuant to article 17, paragraphs 1 (b), (c) and (d). The Commission shall adopt the budget by consensus. If the Commission is unable to adopt a decision on the budget, the level of contributions to the administrative budget of the Commission shall be determined in accordance with the budget for the preceding year for the purposes of meeting the administrative expenses of the Commission for the following year until such time as a new budget can be adopted by consensus.

2. The amount of the contribution to the budget shall be determined in accordance with a scheme which the Commission shall adopt, and amend as required, by consensus. In adopting the scheme, due consideration shall be given to each member being assessed an equal basic fee, a fee based upon national wealth, reflecting the state of development of the member concerned and its ability to pay, and a variable fee. The variable fee shall be based, inter alia, on the total catch taken within exclusive economic zones and in areas beyond national jurisdiction in the Convention Area of such species as may be specified by the Commission, provided that a discount factor shall be applied to the catch taken in the exclusive economic zone of a member of the Commission which is a developing State or territory by vessels flying the flag of that member. The scheme adopted by the Commission shall be set out in the financial regulations of the Commission.

3. If a contributor is in arrears in the payment of its financial contributions to the Commission it shall not participate in the taking of decisions by the Commission if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. Interest shall be payable on such unpaid contributions at such rate as may be determined by the Commission in its financial regulations. The Commission may, nevertheless, waive such interest payments and permit such a member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the member.

Article 19

Annual audit

The records, books and accounts of the Commission, including its annual financial statement, shall be audited annually by an independent auditor appointed by the Commission.

SECTION 6. DECISION-MAKING

Article 20

Decision-making

1. As a general rule, decision-making in the Commission shall be by consensus. For the purposes of this article, "consensus" means the absence of any formal objection made at the time the decision was taken.

2. Except where this Convention expressly provides that a decision shall be made by consensus, if all efforts to reach a decision by consensus have been exhausted, decisions by voting on questions of procedure shall be taken by a majority of those present and voting. Decisions on questions of substance shall be taken by a three-fourths majority of those present and voting provided that such majority includes a three-fourths majority of the members of the South Pacific Forum Fisheries Agency present and voting and a three-fourths majority of non-members of the South Pacific Forum Fisheries Agency present and voting and provided further that in no circumstances shall a proposal be defeated by two or fewer votes in either chamber. When the issue arises as to whether

a question is one of substance or not, that question shall be treated as one of substance unless otherwise decided by the Commission by consensus or by the majority required for decisions on questions of substance.

3. If it appears to the Chairman that all efforts to reach a decision by consensus have been exhausted, the Chairman shall fix a time during that session of the Commission for taking the decision by a vote. At the request of any representative, the Commission may, by a majority of those present and voting, defer the taking of a decision until such time during the same session as the Commission may decide. At that time, the Commission shall take a vote on the deferred question. This rule may be applied only once to any question.

4. Where this Convention expressly provides that a decision on a proposal shall be taken by consensus and the Chairman determines that there would be an objection to such proposal, the Commission may appoint a conciliator for the purpose of reconciling the differences in order to achieve consensus on the matter.

5. Subject to paragraphs 6 and 7, a decision adopted by the Commission shall become binding 60 days after the date of its adoption.

6. A member which has voted against a decision or which was absent during the meeting at which the decision was made may, within 30 days of the adoption of the decision by the Commission, seek a review of the decision by a review panel constituted in accordance with the procedures set out in Annex II to this Convention on the grounds that:

(a) the decision is inconsistent with the provisions of this Convention, the Agreement or the 1982 Convention; or

(b) the decision unjustifiably discriminates in form or in fact against the member concerned.

7. Pending the findings and recommendations of the review panel and any action required by the Commission, no member of the Commission shall be required to give effect to the decision in question.

8. If the review panel finds that the decision of the Commission need not be modified, amended or revoked, the decision shall become binding 30 days from the date of communication by the Executive Director of the findings and recommendations of the review panel.

9. If the review panel recommends to the Commission that the decision be modified, amended or revoked, the Commission shall, at its next annual meeting, modify or amend its decision in order to conform with the findings and recommendations of the review panel or it may decide to revoke the decision, provided that, if so requested in writing by a majority of the members, a special meeting of the Commission shall be convened within 60 days of the date of communication of the findings and recommendations of the review panel.

SECTION 7. TRANSPARENCY AND COOPERATION WITH OTHER ORGANIZATIONS

Article 21

Transparency

The Commission shall promote transparency in its decision-making processes and other activities. Representatives from intergovernmental organizations and non-governmental organizations concerned with matters relevant to the implementation of this Convention shall be afforded the opportunity to participate in the meetings of the Commission and its subsidiary bodies as observers or otherwise as appropriate. The rules of procedure of the Commission shall provide for such participation. The procedures shall not be unduly restrictive in this respect. Such intergovernmental organizations and non-governmental organizations shall be given timely access to pertinent information subject to the rules and procedures which the Commission may adopt.

Article 22

Cooperation with other organizations

1. The Commission shall cooperate, as appropriate, with the Food and Agriculture Organization of the United Nations and with other specialized agencies and bodies of the United Nations on matters of mutual interest.

2. The Commission shall make suitable arrangements for consultation, cooperation and collaboration with other relevant intergovernmental organizations, particularly those which have related objectives and which can contribute to the attainment of the objective of this Convention, such as the Commission for the Conservation of Antarctic Marine Living Resources, the Commission for the Conservation of Southern Bluefin Tuna, the Indian Ocean Tuna Commission and the Inter-American Tropical Tuna Commission.

3. Where the Convention Area overlaps with an area under regulation by another fisheries management organization, the Commission shall cooperate with such other organization in order to avoid the duplication of measures in respect of species in that area which are regulated by both organizations.

4. The Commission shall cooperate with the Inter-American Tropical Tuna Commission to ensure that the objective set out in article 2 of this Convention is reached. To that end, the Commission shall initiate consultation with the Inter-American Tropical Tuna Commission with a view to reaching agreement on a consistent set of conservation and management measures, including measures relating to monitoring, control and surveillance, for fish stocks that occur in the Convention Areas of both organizations.

5. The Commission may enter into relationship agreements with the organizations referred to in this article and with other organizations as may be appropriate, such as the Pacific Community and the South Pacific Forum Fisheries Agency, with a view to obtaining the best available scientific and other fisheries-related

information to further the attainment of the objective of this Convention and to minimize duplication with respect to their work.

6. Any organization with which the Commission has entered into an arrangement or agreement under paragraphs 1, 2 and 5 may designate representatives to attend meetings of the Commission as observers in accordance with the rules of procedure of the Commission. Procedures shall be established for obtaining the views of such organizations in appropriate cases.

PART IV

OBLIGATIONS OF MEMBERS OF THE COMMISSION

Article 23

Obligations of members of the Commission

1. Each member of the Commission shall promptly implement the provisions of this Convention and any conservation, management and other measures or matters which may be agreed pursuant to this Convention from time to time and shall cooperate in furthering the objective of this Convention.

2. Each member of the Commission shall:

(a) provide annually to the Commission statistical, biological and other data and information in accordance with Annex I of the Agreement and, in addition, such data and information as the Commission may require;

(b) provide to the Commission in the manner and at such intervals as may be required by the Commission, information concerning its fishing activities in the Convention Area, including fishing areas and fishing vessels in order to facilitate the compilation of reliable catch and effort statistics; and

(c) provide to the Commission at such intervals as may be required information on steps taken to implement the conservation and management measures adopted by the Commission.

3. The members of the Commission shall keep the Commission informed of the measures they have adopted for the conservation and management of highly migratory fish stocks in areas within the Convention Area under their national jurisdiction. The Commission shall circulate periodically such information to all members.

4. Each member of the Commission shall keep the Commission informed of the measures it has adopted for regulating the activities of fishing vessels flying its flag which fish in the Convention Area. The Commission shall circulate periodically such information to all members.

5. Each member of the Commission shall, to the greatest extent possible, take measures to ensure that its nationals, and fishing vessels owned or controlled by its nationals fishing in the Convention Area, comply with the provisions of this Convention. To this end, members of the Commission may enter into agreements with States whose

flags such vessels are flying to facilitate such enforcement. Each member of the Commission shall, to the greatest extent possible, at the request of any other member, and when provided with the relevant information, investigate any alleged violation by its nationals, or fishing vessels owned or controlled by its nationals, of the provisions of this Convention or any conservation and management measure adopted by the Commission. A report on the progress of the investigation, including details of any action taken or proposed to be taken in relation to the alleged violation, shall be provided to the member making the request and to the Commission as soon as practicable and in any case within two months of such request and a report on the outcome of the investigation shall be provided when the investigation is completed.

PART V
DUTIES OF THE FLAG STATE

Article 24
Flag State duties

1. Each member of the Commission shall take such measures as may be necessary to ensure that:

(a) fishing vessels flying its flag comply with the provisions of this Convention and the conservation and management measures adopted pursuant hereto and that such vessels do not engage in any activity which undermine the effectiveness of such measures; and

(b) fishing vessels flying its flag do not conduct unauthorized fishing within areas under the national jurisdiction of any Contracting Party.

2. No member of the Commission shall allow any fishing vessel entitled to fly its flag to be used for fishing for highly migratory fish stocks in the Convention Area beyond areas of national jurisdiction unless it has been authorized to do so by the appropriate authority or authorities of that member. A member of the Commission shall authorize the use of vessels flying its flag for fishing in the Convention Area beyond areas of national jurisdiction only where it is able to exercise effectively its responsibilities in respect of such vessels under the 1982 Convention, the Agreement and this Convention.

3. It shall be a condition of every authorization issued by a member of the Commission that the fishing vessel in respect of which the authorization is issued:

(a) conducts fishing within areas under the national jurisdiction of other States only where the fishing vessel holds any licence, permit or authorization that may be required by such other State; and

(b) is operated on the high seas in the Convention Area in accordance with the requirements of Annex III, the requirements of which shall also be established as a general obligation of all vessels operating pursuant to this Convention.

4. Each member of the Commission shall, for the purposes of effective implementation of this Convention, maintain a record of fishing vessels entitled to fly its flag and authorized to be used for fishing in the Convention Area beyond its area of national jurisdiction, and shall ensure that all such fishing vessels are entered in that record.

5. Each member of the Commission shall provide annually to the Commission, in accordance with such procedures as may be agreed by the Commission, the information set out in Annex IV to this Convention with respect to each fishing vessel entered in the record required to be maintained under paragraph 4 and shall promptly notify the Commission of any modifications to such information.

6. Each member of the Commission shall also promptly inform the Commission of:

(a) any additions to the record;

(b) any deletions from the record by reason of:

(i) the voluntary relinquishment or non-renewal of the fishing authorization by the fishing vessel owner or operator;

(ii) the withdrawal of the fishing authorization issued in respect of the fishing vessel under paragraph 2;

(iii) the fact that the fishing vessel concerned is no longer entitled to fly its flag;

(iv) the scrapping, decommissioning or loss of the fishing vessel concerned; and

(v) any other reason,

specifying which of the reasons listed above is applicable.

7. The Commission shall maintain its own record, based on the information provided to it pursuant to paragraphs 5 and 6, of fishing vessels referred to in paragraph 4. The Commission shall circulate periodically the information contained in such record to all members of the Commission, and, on request, individually to any member.

8. Each member of the Commission shall require its fishing vessels that fish for highly migratory fish stocks on the high seas in the Convention Area to use near real-time satellite position-fixing transmitters while in such areas. The standards, specifications and procedures for the use of such transmitters shall be established by the Commission, which shall operate a vessel monitoring system for all vessels that fish for highly migratory fish stocks on the high seas in the Convention Area. In establishing such standards, specifications and procedures, the Commission shall take into account the characteristics of traditional fishing vessels from developing States. The Commission, directly, and simultaneously with the flag State where the flag State so requires, or through such other organization designated by the Commission, shall receive information from the vessel monitoring system in accordance with the procedures adopted by the

Commission. The procedures adopted by the Commission shall include appropriate measures to protect the confidentiality of information received through the vessel monitoring system. Any member of the Commission may request that waters under its national jurisdiction be included within the area covered by such vessel monitoring system.

9. Each member of the Commission shall require its fishing vessels that fish in the Convention Area in areas under the national jurisdiction of another member to operate near real-time satellite position-fixing transmitters in accordance with the standards, specification and procedures to be determined by the coastal State.

10. The members of the Commission shall cooperate to ensure compatibility between national and high seas vessel monitoring systems.

PART VI
COMPLIANCE AND ENFORCEMENT

Article 25

Compliance and enforcement

1. Each member of the Commission shall enforce the provisions of this Convention and any conservation and management measures issued by the Commission.

2. Each member of the Commission shall, at the request of any other member, and when provided with the relevant information, investigate fully any alleged violation by fishing vessels flying its flag of the provisions of this Convention or any conservation and management measure adopted by the Commission. A report on the progress of the investigation, including details of any action taken or proposed to be taken in relation to the alleged violation, shall be provided to the member making the request and to the Commission as soon as practicable and in any case within two months of such request and a report on the outcome of the investigation shall be provided when the investigation is completed.

3. Each member of the Commission shall, if satisfied that sufficient evidence is available in respect of an alleged violation by a fishing vessel flying its flag, refer the case to its authorities with a view to instituting proceedings without delay in accordance with its laws and, where appropriate, detain the vessel concerned.

4. Each member of the Commission shall ensure that, where it has been established, in accordance with its laws, that a fishing vessel flying its flag has been involved in the commission of a serious violation of the provisions of this Convention or of any conservation and management measures adopted by the Commission, the vessel concerned ceases fishing activities and does not engage in such activities in the Convention Area until such time as all outstanding sanctions imposed by the flag State in respect of the violation have been complied with. Where the vessel concerned has conducted unauthorized fishing within areas under the national jurisdiction of any coastal State Party to this Convention, the flag State shall, in accordance with its laws, ensure

that the vessel complies promptly with any sanctions which may be imposed by such coastal State in accordance with its national laws and regulations or shall impose appropriate sanctions in accordance with paragraph 7. For the purposes of this article, a serious violation shall include any of the violations specified in article 21, paragraphs 11 (a) to (h) of the Agreement and such other violations as may be determined by the Commission.

5. Each member of the Commission shall, to the extent permitted by its national laws and regulations, establish arrangements for making available to prosecuting authorities of other members evidence relating to alleged violations.

6. Where there are reasonable grounds for believing that a fishing vessel on the high seas has engaged in unauthorized fishing within an area under the national jurisdiction of a member of the Commission, the flag State of that vessel, at the request of the member concerned, shall immediately and fully investigate the matter. The flag State shall cooperate with the member concerned in taking appropriate enforcement action in such cases and may authorize the relevant authorities of such member to board and inspect the vessel on the high seas. This paragraph is without prejudice to article 111 of the 1982 Convention.

7. All investigations and judicial proceedings shall be carried out expeditiously. Sanctions applicable in respect of violations shall be adequate in severity to be effective in securing compliance and to discourage violations wherever they occur and shall deprive offenders of the benefits accruing from their illegal activities. Measures applicable in respect of masters and other officers of fishing vessels shall include provisions which may permit, inter alia, refusal, withdrawal or suspension of authorizations to serve as masters or officers on such vessels.

8. Each member shall transmit to the Commission an annual statement of compliance measures, including imposition of sanctions for any violations, it has taken in accordance with this article.

9. The provisions of this article are without prejudice to:

(a) the rights of any of the members of the Commission in accordance with their national laws and regulations relating to fisheries, including the right to impose appropriate sanctions on the vessel concerned in respect of violations occurring within areas under national jurisdiction in accordance with such national laws and regulations; and

(b) the rights of any of the members of the Commission in relation to any provision relating to compliance and enforcement contained in any relevant bilateral or multilateral fisheries access agreement not inconsistent with the provisions of this Convention, the Agreement or the 1982 Convention.

10. Each member of the Commission, where it has reasonable grounds for believing that a fishing vessel flying the flag of another State has engaged in any activity that undermines the effectiveness of conservation and management measures adopted for

the Convention Area, shall draw this to the attention of the flag State concerned and may, as appropriate, draw the matter to the attention of the Commission. To the extent permitted by its national laws and regulations it shall provide the flag State with full supporting evidence and may provide the Commission with a summary of such evidence. The Commission shall not circulate such information until such time as the flag State has had an opportunity to comment, within a reasonable time, on the allegation and evidence submitted, or to object as the case may be.

11. The members of the Commission may take action in accordance with the Agreement and international law, including through procedures adopted by the Commission for this purpose, to deter fishing vessels which have engaged in activities which undermine the effectiveness of or otherwise violate the conservation and management measures adopted by the Commission from fishing in the Convention Area until such time as appropriate action is taken by the flag State.

12. The Commission, when necessary, shall develop procedures which allow for non-discriminatory trade measures to be taken, consistent with the international obligations of the members of the Commission, on any species regulated by the Commission, against any State or entity whose fishing vessels fish in a manner which undermines the effectiveness of the conservation and management measures adopted by the Commission.

Article 26

Boarding and inspection

1. For the purposes of ensuring compliance with conservation and management measures, the Commission shall establish procedures for boarding and inspection of fishing vessels on the high seas in the Convention Area. All vessels used for boarding and inspection of fishing vessels on the high seas in the Convention Area shall be clearly marked and identifiable as being on government service and authorized to undertake high seas boarding and inspection in accordance with this Convention.

2. If, within two years of the entry into force of this Convention, the Commission is not able to agree on such procedures, or on an alternative mechanism which effectively discharges the obligations of the members of the Commission under the Agreement and this Convention to ensure compliance with the conservation and management measures established by the Commission, articles 21 and 22 of the Agreement shall be applied, subject to paragraph 3, as if they were part of this Convention and boarding and inspection of fishing vessels in the Convention Area, as well as any subsequent enforcement action, shall be conducted in accordance with the procedures set out therein and such additional practical procedures as the Commission may decide are necessary for the implementation of articles 21 and 22 of the Agreement.

3. Each member of the Commission shall ensure that fishing vessels flying its flag accept boarding by duly authorized inspectors in accordance with such

procedures. Such duly authorized inspectors shall comply with the procedures for boarding and inspection.

Article 27

Measures taken by a port State

1. A port State has the right and the duty to take measures, in accordance with international law, to promote the effectiveness of subregional, regional and global conservation and management measures. When taking such measures a port State shall not discriminate in form or in fact against the fishing vessels of any State.

2. Whenever a fishing vessel of a member of the Commission voluntarily enters a port or offshore terminal of another member, the port State may, inter alia, inspect documents, fishing gear and catch on board such fishing vessel.

3. Members of the Commission may adopt regulations empowering the relevant national authorities to prohibit landings and transhipments where it has been established that the catch has been taken in a manner which undermines the effectiveness of conservation and management measures adopted by the Commission.

4. Nothing in this article affects the exercise by Contracting Parties of their sovereignty over ports in their territory in accordance with international law.

PART VII
REGIONAL OBSERVER PROGRAMME AND REGULATION OF TRANSHIPMENT

Article 28

Regional observer programme

1. The Commission shall develop a regional observer programme to collect verified catch data, other scientific data and additional information related to the fishery from the Convention Area and to monitor the implementation of the conservation and management measures adopted by the Commission.

2. The observer programme shall be coordinated by the Secretariat of the Commission, and shall be organized in a flexible manner which takes into account the nature of the fishery and other relevant factors. In this regard, the Commission may enter into contracts for the provision of the regional observer programme.

3. The regional observer programme shall consist of independent and impartial observers authorized by the Secretariat of the Commission. The programme should be coordinated, to the maximum extent possible, with other regional, subregional and national observer programmes.

4. Each member of the Commission shall ensure that fishing vessels flying its flag in the Convention Area, except for vessels that operate exclusively within waters under the national jurisdiction of the flag State, are prepared to accept an observer from the regional observer programme, if required by the Commission.

5. The provisions of paragraph 4 shall apply to vessels fishing exclusively on the high seas in the Convention Area, vessels fishing on the high seas and in waters under the jurisdiction of one or more coastal States, and vessels fishing in waters under the jurisdiction of two or more coastal States. When a vessel is operating on the same fishing trip both in waters under the national jurisdiction of its flag State and in the adjacent high seas, an observer placed under the regional observer programme shall not undertake any of the activities specified in paragraph 6 (e) when the vessel is in waters under the national jurisdiction of its flag State, unless the flag State of the vessel agrees otherwise.

6. The regional observer programme shall operate in accordance with the following guidelines and under the conditions set out in article 3 of Annex III of this Convention:

(a) the programme shall provide a sufficient level of coverage to ensure that the Commission receives appropriate data and information on catch levels and related matters within the Convention Area, taking into account the characteristics of the fisheries;

(b) each member of the Commission shall be entitled to have its nationals included in the programme as observers;

(c) observers shall be trained and certified in accordance with uniform procedures to be approved by the Commission;

(d) observers shall not unduly interfere with the lawful operations of the vessel and, in carrying out their functions, they shall give due consideration to the operational requirements of the vessel and shall communicate regularly with the captain or master for this purpose;

(e) the activities of observers shall include collecting catch data and other scientific data, monitoring the implementation of conservation and management measures adopted by the Commission and reporting of their findings in accordance with procedures to be developed by the Commission;

(f) the programme shall be cost effective, shall avoid duplication with existing regional, subregional and national observer programmes, and shall, to the extent practicable, seek to minimize disruption to the operations of vessels fishing in the Convention Area;

(g) a reasonable period of notice of the placement of an observer shall be given.

7. The Commission shall develop further procedures and guidelines for the operation of the regional observer programme, including:

(a) to ensure the security of non-aggregated data and other information which the Commission deems to be of a confidential nature;

(b) for the dissemination of data and information collected by observers to the members of the Commission;

(c) for boarding of observers which clearly define the rights and responsibilities of the captain or master of the vessel and the crew when an observer is on board a vessel, as well as the rights and responsibilities of observers in the performance of their duties.

8. The Commission shall determine the manner in which the costs of the observer programme would be defrayed.

Article 29

Transhipment

1. In order to support efforts to ensure accurate reporting of catches, the members of the Commission shall encourage their fishing vessels, to the extent practicable, to conduct transhipment in port. A member may designate one or more of its ports as transhipment ports for the purposes of this Convention, and the Commission shall circulate periodically to all members a list of such designated ports.

2. Transhipment at a port or in an area within waters under the national jurisdiction of a member of the Commission shall take place in accordance with applicable national laws.

3. The Commission shall develop procedures to obtain and verify data on the quantity and species transhipped both in port and at sea in the Convention Area and procedures to determine when transhipment covered by this Convention has been completed.

4. Transhipment at sea in the Convention Area beyond areas under national jurisdiction shall take place only in accordance with the terms and conditions set out in article 4 of Annex III to this Convention, and any procedures established by the Commission pursuant to paragraph 3 of this article. Such procedures shall take into account the characteristics of the fishery concerned.

5. Notwithstanding paragraph 4 above, and subject to specific exemptions which the Commission adopts in order to reflect existing operations, transhipment at sea by purse-seine vessels operating within the Convention Area shall be prohibited.

PART VIII
REQUIREMENTS OF DEVELOPING STATES

Article 30

Recognition of the special requirements of developing States

1. The Commission shall give full recognition to the special requirements of developing States Parties to this Convention, in particular small island developing States, and of territories and possessions, in relation to conservation and management of highly migratory fish stocks in the Convention Area and development of fisheries for such stocks.

2. In giving effect to the duty to cooperate in the establishment of conservation and management measures for highly migratory fish stocks, the

Commission shall take into account the special requirements of developing States Parties, in particular small island developing States, and of territories and possessions, in particular:

(a) the vulnerability of developing States Parties, in particular small island developing States, which are dependent on the exploitation of marine living resources, including for meeting the nutritional requirements of their populations or parts thereof;

(b) the need to avoid adverse impacts on, and ensure access to fisheries by, subsistence, small-scale and artisanal fishers and fishworkers, as well as indigenous people in developing States Parties, particularly small island developing States Parties, and territories and possessions; and

(c) the need to ensure that such measures do not result in transferring, directly or indirectly, a disproportionate burden of conservation action onto developing States Parties, and territories and possessions.

3. The Commission shall establish a fund to facilitate the effective participation of developing States Parties, particularly small island developing States, and, where appropriate, territories and possessions, in the work of the Commission, including its meetings and those of its subsidiary bodies. The financial regulations of the Commission shall include guidelines for the administration of the fund and criteria for eligibility for assistance.

4. Cooperation with developing States, and territories and possessions, for the purposes set out in this article may include the provision of financial assistance, assistance relating to human resources development, technical assistance, transfer of technology, including through joint venture arrangements, and advisory and consultative services. Such assistance shall, inter alia, be directed towards:

(a) improved conservation and management of highly migratory fish stocks through collection, reporting, verification, exchange and analysis of fisheries data and related information;

(b) stock assessment and scientific research; and

(c) monitoring, control, surveillance, compliance and enforcement, including training and capacity-building at the local level, development and funding of national and regional observer programmes and access to technology and equipment.

PART IX
PEACEFUL SETTLEMENT OF DISPUTES

Article 31
Procedures for the settlement of disputes

The provisions relating to the settlement of disputes set out in Part VIII of the Agreement apply, mutatis mutandis, to any dispute between members of the Commission, whether or not they are also Parties to the Agreement.

PART X

NON-PARTIES TO THIS CONVENTION

Article 32

Non-parties to this Convention

1. Each member of the Commission shall take measures consistent with this Convention, the Agreement and international law to deter the activities of vessels flying the flags of non-parties to this Convention which undermine the effectiveness of conservation and management measures adopted by the Commission.

2. The members of the Commission shall exchange information on the activities of fishing vessels flying the flags of non-parties to this Convention which are engaged in fishing operations in the Convention Area.

3. The Commission shall draw the attention of any State which is not a Party to this Convention to any activity undertaken by its nationals or vessels flying its flag which, in the opinion of the Commission, affects the implementation of the objective of this Convention.

4. The members of the Commission shall, individually or jointly, request non-parties to this Convention whose vessels fish in the Convention Area to cooperate fully in the implementation of conservation and management measures adopted by the Commission with a view to ensuring that such measures are applied to all fishing activities in the Convention Area. Such cooperating non-parties to this Convention shall enjoy benefits from participation in the fishery commensurate with their commitment to comply with, and their record of compliance with, conservation and management measures in respect of the relevant stocks.

5. Non-parties to this Convention, may, upon request and subject to the concurrence of the members of the Commission and to the rules of procedure relating to the granting of observer status, be invited to attend meetings of the Commission as observers.

PART XI

GOOD FAITH AND ABUSE OF RIGHTS

Article 33

Good faith and abuse of rights

The obligations assumed under this Convention shall be fulfilled in good faith and the rights recognized in this Convention shall be exercised in a manner which would not constitute an abuse of right.

PART XII
FINAL PROVISIONS

Article 34

Signature, ratification, acceptance, approval

1. This Convention shall be open for signature by Australia, Canada, China, Cook Islands, Federated States of Micronesia, Fiji Islands, France, Indonesia, Japan, Republic of Kiribati, Republic of the Marshall Islands, Republic of Nauru, New Zealand, Niue, Republic of Palau, Independent State of Papua New Guinea, Republic of the Philippines, Republic of Korea, Independent State of Samoa, Solomon Islands, Kingdom of Tonga, Tuvalu, United Kingdom of Great Britain and Northern Ireland in respect of Pitcairn, Henderson, Ducie and Oeno Islands, United States of America and Republic of Vanuatu and shall remain open for signature for twelve months from the fifth day of September 2000.

2. This Convention is subject to ratification, acceptance or approval by the signatories.

3. Instruments of ratification, acceptance or approval shall be deposited with the depositary.

4. Each Contracting Party shall be a member of the Commission established by this Convention.

Article 35

Accession

1. This Convention shall remain open for accession by the States referred to in article 34, paragraph 1, and by any entity referred to in article 305, paragraph 1, subparagraphs (c), (d) and (e) of the 1982 Convention which is situated in the Convention Area.

2. After the entry into force of this Convention, the Contracting Parties may, by consensus, invite other States and regional economic integration organizations, whose nationals and fishing vessels wish to conduct fishing for highly migratory fish stocks in the Convention Area to accede to this Convention.

3. Instruments of accession shall be deposited with the depositary.

Article 36

Entry into force

1. This Convention shall enter into force 30 days after the deposit of instruments of ratification, acceptance, approval or accession by:

(a) three States situated north of the 20° parallel of north latitude; and

(b) seven States situated south of the 20° parallel of north latitude.

2. If, within three years of its adoption, this Convention has not been ratified by three of the States referred to in paragraph 1 (a), this Convention shall enter into force

six months after the deposit of the thirteenth instrument of ratification, acceptance, approval or accession or in accordance with paragraph 1, whichever is the earlier.

3. For each State, entity referred to in article 305, paragraph 1, subparagraphs (c), (d) and (e) of the 1982 Convention which is situated in the Convention Area, or regional economic integration organization which ratifies, formally confirms, accepts or approves the Convention or accedes thereto after the entry into force of this Convention, this Convention shall enter into force on the thirtieth day following the deposit of its instrument of ratification, formal confirmation, acceptance, approval or accession.

Article 37

Reservations and exceptions

No reservations or exceptions may be made to this Convention.

Article 38

Declarations and statements

Article 37 does not preclude a State, entity referred to in article 305, paragraph 1, subparagraphs (c), (d) and (e) of the 1982 Convention which is situated in the Convention Area, or regional economic integration organization, when signing, ratifying or acceding to this Convention, from making declarations or statements, however phrased or named, with a view, inter alia, to the harmonization of its laws and regulations with the provisions of this Convention, provided that such declarations or statements do not purport to exclude or to modify the legal effect of the provisions of this Convention in their application to that State, entity or regional economic integration organization.

Article 39

Relation to other agreements

This Convention shall not alter the rights and obligations of Contracting Parties, and fishing entities referred to in article 9, paragraph 2, which arise from other agreements compatible with this Convention and which do not affect the enjoyment by other Contracting Parties of their rights or the performance of their obligations under this Convention.

Article 40

Amendment

1. Any member of the Commission may propose amendments to this Convention to be considered by the Commission. Any such proposal shall be made by written communication addressed to the Executive Director at least 60 days before the meeting of the Commission at which it is to be considered. The Executive Director shall promptly circulate such communication to all members of the Commission.

2. Amendments to this Convention shall be considered at the annual meeting of the Commission unless a majority of the members request a special meeting to consider the proposed amendment. A special meeting may be convened on not less than 60 days notice. Amendments to this Convention shall be adopted by consensus. The text

of any amendment adopted by the Commission shall be transmitted promptly by the Executive Director to all members of the Commission.

3. Amendments to this Convention shall enter into force for the Contracting Parties ratifying or acceding to them on the thirtieth day following the deposit of instruments of ratification or accession by a majority of Contracting Parties. Thereafter, for each Contracting Party ratifying or acceding to an amendment after the deposit of the required number of such instruments, the amendment shall enter into force on the thirtieth day following the deposit of its instrument of ratification or accession.

Article 41

Annexes

1. The Annexes form an integral part of this Convention and, unless expressly provided otherwise, a reference to this Convention or to one of its Parts includes a reference to the Annexes relating thereto.

2. The Annexes to this Convention may be revised from time to time and any member of the Commission may propose revisions to an Annex. Notwithstanding the provisions of article 40, if a revision to an Annex is adopted by consensus at a meeting of the Commission, it shall be incorporated in this Convention and shall take effect from the date of its adoption or from such other date as may be specified in the revision.

Article 42

Withdrawal

1. A Contracting Party may, by written notification addressed to the depositary, withdraw from this Convention and may indicate its reasons. Failure to indicate reasons shall not affect the validity of the withdrawal. The withdrawal shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date.

2. Withdrawal from this Convention by a Contracting Party shall not affect the financial obligations of such member incurred prior to its withdrawal becoming effective.

3. Withdrawal from this Convention by a Contracting Party shall not in any way affect the duty of such member to fulfil any obligation embodied in this Convention to which it would be subject under international law independently of this Convention.

Article 43

Participation by territories

1. The Commission and its subsidiary bodies shall be open to participation, with the appropriate authorization of the Contracting Party having responsibility for its international affairs, to each of the following:

American Samoa

French Polynesia

Guam

New Caledonia

Northern Mariana Islands

Tokelau

Wallis and Futuna

2. The nature and extent of such participation shall be provided for by the Contracting Parties in separate rules of procedure of the Commission, taking into account international law, the distribution of competence on matters covered by this Convention and the evolution in the capacity of such territory to exercise rights and responsibilities under this Convention.

3. Notwithstanding paragraph 2, all such participants shall be entitled to participate fully in the work of the Commission, including the right to be present and to speak at the meetings of the Commission and its subsidiary bodies. In the performance of its functions, and in taking decisions, the Commission shall take into account the interests of all participants.

Article 44

Depositary

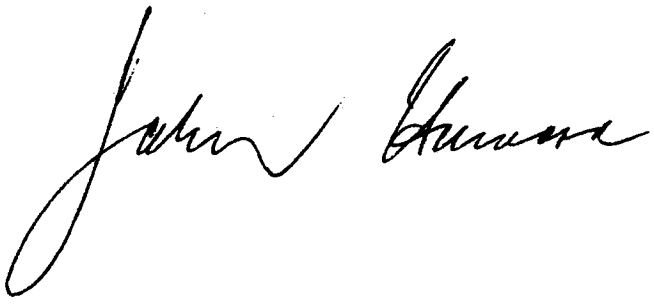
The Government of New Zealand shall be the depositary of this Convention and any amendments or revisions thereto. The depositary shall register this Convention with the Secretary-General of the United Nations in accordance with article 102 of the Charter of the United Nations.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, being duly authorized thereto, have signed this Convention.

DONE at Honolulu this fifth day of September, two thousand, in a single original.

SIGNATURES OF REPRESENTATIVES:

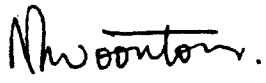
AUSTRALIA:



CANADA:

CHINA:

COOK ISLANDS:



FEDERATED STATES OF MICRONESIA:

REPUBLIC OF THE FIJI ISLANDS:

FRANCE:

INDONESIA:

JAPAN:

REPUBLIC OF KIRIBATI:

REPUBLIC OF THE MARSHALL ISLANDS:

REPUBLIC OF NAURU:

NEW ZEALAND:

NIUE:

REPUBLIC OF PALAU:

THE INDEPENDENT STATE
OF PAPUA NEW GUINEA:

REPUBLIC OF THE PHILIPPINES:

05 Sept 2008

REPUBLIC OF KOREA:

THE INDEPENDENT STATE OF SAMOA:

SOLOMON ISLANDS:

THE KINGDOM OF TONGA:

TUVALU:

THE UNITED KINGDOM OF
GREAT BRITAIN AND NORTHERN IRELAND
IN RESPECT OF PITCAIRN, HENDERSON,
DUCIE AND OENO ISLANDS:

THE UNITED STATES OF AMERICA: R. Tucker Scully

REPUBLIC OF VANUATU:

ANNEX I. FISHING ENTITIES

1. After the entry into force of this Convention, any fishing entity whose vessels fish for highly migratory fish stocks in the Convention Area, may, by a written instrument delivered to the depositary, agree to be bound by the regime established by this Convention. Such agreement shall become effective thirty days following the delivery of the instrument. Any such fishing entity may withdraw such agreement by written notification addressed to the depositary. The withdrawal shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date.

2. Such fishing entity shall participate in the work of the Commission, including decision-making, and shall comply with the obligations under this Convention. References thereto by the Commission or members of the Commission include, for the purposes of this Convention, such fishing entity as well as Contracting Parties.

3. If a dispute concerning the interpretation or application of this Convention involving a fishing entity cannot be settled by agreement between the parties to the dispute, the dispute shall, at the request of either party to the dispute, be submitted to final and binding arbitration in accordance with the relevant rules of the Permanent Court of Arbitration.

4. The provisions of this Annex relating to participation by fishing entities are solely for the purposes of this Convention.

ANNEX II. REVIEW PANEL

1. In accordance with article 20, paragraph 6, an application for review of a decision of the Commission shall be submitted within 30 days of the adoption of the decision by written notification to the Executive Director. Such notification shall be accompanied by a statement of the grounds upon which the review is sought. The Executive Director shall circulate copies of the notification and the accompanying statement to all members of the Commission.

2. The review panel shall be constituted as follows:

(a) The review panel shall consist of three members appointed in accordance with this Annex from the list of experts in the field of fisheries drawn up and maintained by the Food and Agriculture Organization of the United Nations pursuant to Annex VIII, article 2, of the 1982 Convention or a similar list maintained by the Executive Director;

(b) The member of the Commission submitting the application for review ("the applicant") shall appoint one member, who may or may not be its national. The appointment shall be included in the written notification referred to in paragraph 1;

(c) Where more than one member of the Commission is seeking review of the same decision, such members shall, within 20 days of receipt of the first notification

submitted, appoint one member of the panel jointly by agreement, irrespective of the grounds upon which review is sought by each applicant. If the members concerned are unable to reach agreement on the appointment, the appointment shall be made in accordance with subparagraph (f), at the request of any such member;

(d) The chairman of the Commission shall, within 20 days of receipt of the notification referred to in paragraph 1 of this Annex, appoint one member;

(e) The other member shall be appointed by agreement between the member or members of the Commission seeking the review and the chairman of the Commission. They shall appoint the President of the review panel from among those three members. If, within 20 days of receipt of the notification referred to in paragraph 1 of this Annex, the member or members seeking the review and the chairman of the Commission are unable to reach agreement on the appointment of one or more members of the panel to be appointed by agreement, or on the appointment of the President of the review panel, the remaining appointment or appointments shall be made in accordance with subparagraph (f), at the request of any party. Such request shall be made within 10 days of the expiration of the aforementioned 20 day period;

(f) Unless the parties agree that any appointment under subparagraphs (c), (d) and (e) of this paragraph be made by a person or a third State chosen by the parties, the President of the International Tribunal for the Law of the Sea shall make the necessary appointments.

(g) Any vacancy shall be filled in the manner described for the initial appointment.

3. A hearing shall be convened at a place and on a date to be determined by the panel within 30 days following the constitution of the review panel.

4. The review panel shall determine its own procedures, providing for the expeditious conduct of the hearing and assuring to the applicant or applicants full opportunity to be heard and to present its or their case.

5. The Executive Director shall act on behalf of the Commission and shall provide the review panel with sufficient information to enable it to understand the basis upon which the decision was made.

6. Any member of the Commission may submit a memorandum to the review panel concerning the matter under review and the panel shall allow any such member full opportunity to be heard.

7. Unless the review panel decides otherwise because of the particular circumstances of the case, the expenses of the review panel, including the remuneration of its members, shall be borne as follows:

(a) 70 per cent shall be borne by the applicant or, if there is more than one applicant, divided equally among the applicants; and

(b) 30 per cent shall be borne by the Commission from its annual budget.

8. Any decision of the review panel shall be taken by a majority of its members.

9. If the applicant or, where there is more than one applicant, any one of them, does not appear before the review panel, the panel may continue the proceedings and make its findings and recommendations. Absence of an applicant shall not constitute a bar to the review proceedings.

10. The findings and recommendations of the review panel shall be confined to the subject matter of the application and state the reasons on which it is based. It shall contain the names of the members who have participated and the date of the finding. Any member of the panel may attach a separate or dissenting opinion to the finding. The review panel shall not, however, substitute its decision for that of the Commission. The panel shall communicate its findings and recommendations, including its reasons, to the applicant or applicants and the Executive Director within 30 days of the end of the hearing. The Executive Director shall circulate copies of the review panel's findings and recommendations and reasons therefor to all members of the Commission.

ANNEX III. TERMS AND CONDITIONS FOR FISHING

Article 1

Introductory

The operator of every fishing vessel authorized to be used for fishing in the Convention Area shall comply with the following terms and conditions at all times when the vessel is in the Convention Area. Such terms and conditions shall apply in addition to any terms and conditions which may apply to the vessel in areas under the national jurisdiction of a member of the Commission by reason of a licence issued by such member or pursuant to a bilateral or multilateral fisheries agreement. For the purposes of this Annex, "operator" means any person who is in charge of, directs or controls a fishing vessel, including the owner, master or charterer.

Article 2

Compliance with national laws

The operator of the vessel shall comply with the applicable national laws of each coastal State Party to this Convention in whose jurisdiction it enters and shall be responsible for the compliance by the vessel and its crew with such laws and the vessel shall be operated in accordance with such laws.

Article 3

Obligations of the operator in respect of observers

1. The operator and each member of the crew shall allow and assist any person identified as an observer under the regional observer programme to:

(a) embark at a place and time agreed to;

(b) have full access to and use of all facilities and equipment on board which the observer may determine is necessary to carry out his or her duties, including full access to the bridge, fish on board, and areas which may be used to hold, process, weigh and store fish, and full access to the vessel's records including its logs and documentation for the purpose of records inspection and copying, reasonable access to navigational equipment, charts and radios, and reasonable access to other information relating to fishing;

(c) remove samples;

(d) disembark at an agreed place and time; and

(e) carry out all duties safely.

2. The operator or any crew member shall not assault, obstruct, resist, delay, refuse boarding to, intimidate or interfere with observers in the performance of their duties.

3. The operator shall provide the observer, while on board the vessel, at no expense to the observer or the observer's government, with food, accommodation and medical facilities of a reasonable standard equivalent to those normally available to an officer on board the vessel.

Article 4

Regulation of transhipment

1. The operator shall comply with any procedures established by the Commission to verify the quantity and species transhipped, and any additional procedures and measures established by the Commission with respect to transhipment in the Convention Area.

2. The operator shall allow and assist any person authorized by the Commission or by the member of the Commission in whose designated port or area a transhipment takes place to have full access to and use of facilities and equipment which such authorized person may determine is necessary to carry out his or her duties, including full access to the bridge, fish on board and areas which may be used to hold, process, weigh and store fish, and full access to the vessel's records, including its log and documentation for the purpose of inspection and photocopying. The operator shall also allow and assist any such authorized person to remove samples and gather any other information required to fully monitor the activity. The operator or any member of the crew shall not assault, obstruct, resist, delay, refuse boarding to, intimidate or interfere with any such authorized person in the performance of such person's duties. Every effort should be made to ensure that any disruption to fishing operations is minimized during inspections of transhipments.

Article 5

Reporting

The operator shall record and report vessel position, catch of target and non-target species, fishing effort and other relevant fisheries data in accordance with the standards for collection of such data set out in Annex I of the Agreement.

Article 6

Enforcement

1. The authorization issued by the flag State of the vessel and, if applicable, any licence issued by a coastal State Party to this Convention, or a duly certified copy, facsimile or telex confirmation thereof, shall be carried on board the vessel at all times and produced at the request of an authorized enforcement official of any member of the Commission.

2. The master and each member of the crew of the vessel shall immediately comply with every instruction and direction given by an authorized and identified officer of a member of the Commission, including to stop, to move to a safe location, and to facilitate safe boarding and inspection of the vessel, its licence, gear, equipment, records, facilities, fish and fish products. Such boarding and inspection shall be conducted as much as possible in a manner so as not to interfere unduly with the lawful operation of the vessel. The operator and each member of the crew shall facilitate and assist in any action by an authorized officer and shall not assault, obstruct, resist, delay, refuse boarding to, intimidate or interfere with an authorized officer in the performance of his or her duties.

3. The vessel shall be marked and identified in accordance with the FAO Standard Specifications for the Marking and Identification of Fishing Vessels or such alternative standard as may be adopted by the Commission. At all times when the vessel is in the Convention Area, all parts of such markings shall be clear, distinct and uncovered.

4. The operator shall ensure the continuous monitoring of the international distress and calling frequency 2182 khz (HF) or the international safety and calling frequency 156.8 Mhz (channel 16, VHF-FM) to facilitate communication with the fisheries management, surveillance and enforcement authorities of the members of the Commission.

5. The operator shall ensure that a recent and up to date copy of the International Code of Signals (INTERCO) is on board and accessible at all times.

6. At all times when the vessel is navigating through an area under the national jurisdiction of a member of the Commission in which it does not have a licence to fish, and at all times when the vessel is navigating on the high seas in the Convention Area and has not been authorized by its flag State to fish on the high seas, all fishing equipment on board the vessel shall be stowed or secured in such a manner that it is not readily available to be used for fishing.

ANNEX IV. INFORMATION REQUIREMENTS

The following information shall be provided to the Commission in respect of each fishing vessel entered in the record required to be maintained under article 24, paragraph 4, of this Convention:

1. Name of fishing vessel, registration number, previous names (if known), and port of registry;
2. Name and address of owner or owners;
3. Name and nationality of master;
4. Previous flag (if any);
5. International Radio Call Sign;
6. Vessel communication types and numbers (INMARSAT A, B and C numbers and satellite telephone number);
7. Colour photograph of vessel;
8. Where and when built;
9. Type of vessel;
10. Normal crew complement;
11. Type of fishing method or methods;
12. Length;
13. Moulded depth;
14. Beam;
15. Gross register tonnage;
16. Power of main engine or engines;
17. The nature of the authorization to fish granted by the flag State;
18. Carrying capacity, including freezer type, capacity and number and fish hold capacity.

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